

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: THOMAS F. UTLEY

)
) File No. 0900461
)

NOTICE OF HEARING

TO THE RESPONDENT: Thomas F. Utley
301 East 1st Street
Deer Creek, Illinois 61733

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953, [815 ILCS 5/1 et seq.] (the "Act") and 14 Ill. Adm. Code 130, Subpart K, a public hearing will be held at 300 West Jefferson Street, Suite 300A, Springfield, Illinois 62702, on the 20th day of July, 2011, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before Jon K. Ellis, or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order of Prohibition should be entered against Thomas F. Utley (the "Respondent") in the State of Illinois and granting such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount pursuant to Section 11 of the Act, payable within ten (10) days of the entry of the Order.

The grounds for such proposed action are as follows:

1. That Respondent, Thomas F. Utley, is an individual with a last known address of 301 East 1st Street, Deer Creek, Illinois 61733;
2. That on or about June 22 and July 1, 2009, Respondent Thomas F. Utley, offered and sold to MC, an Illinois resident, two fixed indexed annuities for a total amount of \$1,238,103;
3. That MC was 73 years old at the time of the aforesaid transactions;
4. That the aforesaid fixed indexed annuities were purchased from the proceeds of the sale of multiple existing variable annuities owned by MC;
5. That the aforesaid variable annuities had two years or less remaining on their surrender periods and MC incurred significant surrender charges as a result of their sale;

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6. That each of the aforesaid fixed indexed annuities had 12 year surrender periods;
7. That Respondent Thomas F. Utley advised and recommended that MC sell the aforesaid variable annuities in order to purchase the aforesaid fixed indexed annuities and that MC sold said variable annuities to purchase said fixed indexed annuities pursuant to said recommendation and advice of Respondent;
8. That each of the aforesaid variable annuities is a security as that term is defined pursuant to Section 2.1. of the Act;
9. That by recommending and advising MC to sell her variable annuities in order to purchase the aforesaid fixed indexed annuities, Respondent Thomas F. Utley was acting as an investment adviser as that term is defined pursuant to Section 2.11. of the Act;
10. That on or about December 17, 2010, pursuant to Section 11.C of the Illinois Securities Law of 1953 [815 ILCS 5/1 et seq.] (the "Act"), the Illinois Securities Department ("Department") sent an inquiry letter ("inquiry letter") to Respondent requiring that a written response be forwarded to the Department within 10 days of receipt;
11. That the records of the Department indicate Respondent received aforesaid inquiry letter on December 22, 2010;
12. That the Department did not receive a response to the aforesaid inquiry letter within the aforesaid required time period and as of February 4, 2011, no such response had been received by the Department;
13. That on or about February 4, 2011, the Department sent a follow up letter and a copy of the aforesaid inquiry letter ("follow up letter") to Respondent, advising Respondent that the Department had not received a timely response to the aforesaid inquiry letter and required said response within 5 days of receipt;
14. That the records of the Department indicate Respondent received aforesaid follow up letter and copy of the original inquiry letter on February 18, 2011;

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15. That the Department did not receive a reply to the aforesaid follow up letter or inquiry letter within the required time period nor has the Department received a response of any kind as of this date;
16. That on or about March 22, 2011, the Department attempted to contact the Respondent by phone in this regard and that the Department's representative left a voice mail message identifying himself and the Department and requesting the Respondent to return the phone call to discuss the aforesaid inquiry letters;
17. That as of this date, the Department has not received any response or return phone call from Respondent regarding the Department's aforesaid voice mail message;
18. That Section 11.C of the Act provides, inter alia, that whenever it shall appear to the Secretary of State, either by complaint or otherwise, that the Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion require the person to file with the Secretary of State a statement in writing as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate and conduct an investigation as necessary or advisable for the protection of the interests of the public;
19. That Section 12.C of the Act provides, inter alia, that it shall be a violation of the Act for any person to act as an investment adviser or investment adviser representative unless registered as such, where such registration is required;
20. That Section 12.D of the Act provides, inter alia, that it shall be a violation of the Act for any person to fail to file with the Secretary of State any document or application required to be filed under the provisions of the Act;
21. That Section 12.J of the Act provides, inter alia, that it shall be a violation of the Act for any person when acting as an investment adviser, directly or indirectly, to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client;

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22. That Section 130.853 of the Regulations under Illinois Securities Law of 1953 [14 Ill. Adm. Code 130.100 et seq.] (the "Regulations") provides, inter alia, that effecting or causing to be effected any transactions of purchase or sale which are unsuitable shall constitute an act, practice or course of business on the part of the investment adviser that is fraudulent, deceptive or manipulative;
23. That at all times relevant hereto, Respondent Thomas F. Utley failed to file a response to the aforesaid inquiry letter with the Department pursuant to the Department's lawful investigation of this matter and as required by the Act;
24. That at all times relevant hereto, Respondent Thomas F. Utley failed to file an application for registration as an investment adviser in the State of Illinois;
25. That at all times relevant hereto, Respondent Thomas F. Utley acted as an investment adviser while not being registered as such;
26. That Respondent Thomas F. Utley effected or caused to be effected a transaction of purchase or sale which was unsuitable for MC, a 73 year old individual, in that he advised and recommended that MC sell her existing variable annuities which had two years or less remaining on their surrender periods, thereby incurring substantial surrender costs, and use the proceeds from said sale to purchase fixed indexed annuities which had surrender periods of 12 years;
27. That by virtue of the foregoing, Respondent Thomas F. Utley has violated Section 12.C, 12.D and/or 12.J of the Act;
28. That Section 11.E(1) of the Act provides, inter alia, that if the Secretary of State shall find that the offer or sale of any securities by any person is fraudulent or would work or tend to work a fraud or deceit, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person;
29. That Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsections C, D and/or J of Section 12 of the Act, the Secretary of State may by

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written order prohibit the person from offering or selling any securities in this State;


30. That Section 11.E(4) of the Act provides, inter alia, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act, as well as an order of public censure and the costs of investigation and reasonable expenses;
31. That by virtue of the foregoing, Respondent Thomas F. Utley is subject to a fine of up to \$10,000.00 per violation, costs of investigation, reasonable expenses, an order of censure, and an order which permanently prohibits the Respondent from offering or selling securities in the State of Illinois.

You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above or a Special Appearance pursuant to Section 130.1107 of the Rules, or other responsive pleading within thirty days of the receipt of this notice. Your failure to do so within the prescribed time shall be deemed an admission of the allegations contained in the Notice of Hearing and waives your right to a hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default.

Delivery of notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated this 19th day of May, 2011

Jesse White 
Jesse White
Secretary of State
State of Illinois

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Attorney for the Secretary of State:

Johan Schripsema

Illinois Securities Department

350 Seright, Suite C

Harrisburg, Illinois 62946

Telephone (618) 253-2007

Hearing Officer:

Jon K. Ellis

1035 South 2nd Street

Springfield, Illinois 62704

Telephone (217) 528-6835

Fax: (217) 528-6837